

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPI VEDACHALAM and KANGANA
BERI, on behalf of themselves
and all others similarly
situated,

Plaintiffs,

v

No C 06-0963 VRW

ORDER

TATA AMERICA INTERNATIONAL
CORPORATION, a New York
corporation; TATA CONSULTANCY
SERVICES, LTD, an Indian
corporation; and TATA SONS, LTD,
an Indian corporation,

Defendants.

In its order filed March 13, 2007 (Doc #55), the court denied defendants' motion to compel arbitration of the claims asserted in this case by plaintiff Gopi Vedachalam. The court now addresses defendants' motion to compel arbitration of the claims brought by Vedachalam's co-plaintiff Kangana Beri. For the reasons stated herein, the court DENIES defendants' motion to compel arbitration of Beri's claims.

The first amended complaint (Doc # 24) pleads diversity (28 USC § 1332) as the basis for federal jurisdiction and describes

1 two classes of plaintiffs. Plaintiffs Vedachalam and Beri both
2 describe themselves as members of a "Nationwide Class A" consisting
3 of individuals employed by defendant TCS who were promised more pay
4 upon deputation to the United States than they actually received
5 and of a "California Class A" consisting of TCS employees who were
6 forced to pay back to defendants, in violation of California Labor
7 Code provisions, wages they had previously earned. Id ¶¶ 6-10.

8 Plaintiff Beri seeks also to represent a class described
9 as "California Class B" consisting of TCS employees working as
10 technical support workers who were allegedly misclassified as
11 exempt from overtime pay and, presumably, directed to work overtime
12 hours without additional compensation. Id ¶ 12. She also seeks to
13 represent a "California Class C" consisting of discharged TCS
14 employees who were allegedly made to forfeit unused vacation time
15 without compensation in violation of California law.

16 Defendants move to compel arbitration under 9 USC § 206
17 and to dismiss or stay the case pending completion of arbitration
18 of Beri's claims. Doc # 74. Because the court concludes that the
19 arbitration provision on which defendants rely applies only to two
20 aspects of the parties' agreement, not here at issue, the claims at
21 bar are not subject to arbitration. This being the case, it is
22 unnecessary to reach certain other contentions that Beri raises to
23 defeat arbitrability, namely: that the agreement is
24 unconscionable; that claims under Business & Professions Code §
25 17200 cannot be arbitrated; and that the documents are legally
26 insufficient under the convention because they lack signatures by
27 TCS.

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I

Tata America International Corporation, Tata Consultancy Services, Ltd and Tata Sons, Ltd are named as defendants in this action. Tata Consultancy Services, Ltd (TCS) is an information-technology outsourcing and consulting company incorporated in India. Doc #24 ¶¶ 15-17. Tata Sons, Ltd is the parent company of TCS and is also incorporated in India. Id. Tata America International Corporation is a United States subsidiary of TCS. Id. These entities are referred to collectively as "defendants."

Plaintiff Kangana Beri is a citizen of India who worked in the United States for TCS as an assistant systems engineer from April 2003 to September 2004. Doc #24 ¶ 14. She now resides in California under an H-4 visa, a dependant visa allowing spouses of those legally working in the United States on H-1B visas to reside in the United States. Id. Beri worked for TCS in India from 2001 until her deputation to the United States in April 2003. The complaint pleads claims arising from alleged actions by TCS after Beri's deputation to the United States.

As with Vedachalam's claims, defendants move to compel arbitration in Mumbai, India based on various documents of different dates. With regard to Beri, defendants submit: a letter offering Beri employment with TCS, a "service agreement" Beri signed upon joining TCS in 2001, a "service agreement addendum," a "deputation agreement" and a "deputation terms agreement." Declaration of Kevin Smith (Doc # 75), Exs F, B, C, D, E. The documents appear, in general, to be more evolved or detailed iterations of the documents in Vedachalam's file that were the subject of the court's scrutiny in connection with the earlier

1 motion to compel. Doc # 55. A description of the documents
2 relevant to this motion follows, in chronological order.

3
4 A

5 The first document is a letter to Beri dated August 7,
6 2000 signed on behalf of TCS by "P A Vandrevale, Executive Vice
7 President." Doc #75, Ex F. The letter offers Beri a position as
8 "Assistant Systems Engineer — Trainee — 12 months" at a monthly
9 salary of 11,000 rupees plus benefits. The bulk of the letter
10 consists of a lengthy paragraph about TCS's training program,
11 excerpted as follows:

12 On joining TCS, you will be given the benefit of
13 formal training at any of our offices. The training
14 forms a critical part of your employment with TCS and
15 is an ongoing process. TCS would continue to make
16 investment on [sic] training and continuing education
of its professionals. * * * We would request that
the training be taken very seriously to enable you to
be successful.

17 The August 7 letter encloses a two-page "Annexure" listing
18 "Benefits" and "Terms of Service." There is no mention of
19 arbitration or dispute resolution of any kind in the letter or the
20 annexure. The annexure, however, in part states:

21 Service Agreement. On the date of your joining, you
22 will be required to handover a Service Agreement to
serve TCS for three years, including your initial
23 training period. The agreement seeks your
reciprocation to TCS' investment in your training, and
24 its commitment to your professional development. A
breach of this undertaking would involve payment of
25 Rs. 50,000/- towards damages to TCS. Accordingly, the
Agreement requires a Surety from an income tax
26 assessee who can provide a guarantee against this
breach and acceptable to TCS.

27 Id.

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1 The next document is a form agreement bearing the heading
2 "ARTICLES OF AGREEENT [sic]." Doc # 75 Ex B. Blanks for day and
3 month are filled in with "Ninth" and "April," respectively, by
4 hand. For the year, "two thousand" is printed while "and one" is
5 filled in by hand. Defendants refer to this document as a "service
6 agreement." Doc # 74, passim. Beri's attorneys refer to this
7 document as a "training agreement," pointing out that Beri is
8 referred to throughout the document as "Trainee" and the document
9 contains references to "the training" and the "Training Programme."
10 Doc #84, passim. Indeed, Beri's name is filled in by hand before
11 the printed parenthetical in the document text stating "hereinafter
12 referred to as 'The Trainee.'" Doc #75 Ex B at 1. Defendants,
13 emphasize that the "Service Agreement" referred to in the annexure
14 requires Beri "to serve TCS for three years, including your initial
15 training period" and that Beri would be required to "handover" such
16 an agreement on her first day. Id Ex F. Accordingly, the court
17 will refer to the April 9, 2001 agreement as the service agreement.

18 The service agreement lists three parties, the first of
19 which is printed on the form, the other two filled in by hand:
20 "Tata Sons Limited acting through its Division Tata Consultancy
21 Services;" Kangana Beri; and Virendar Beri, described as "The
22 Surety/Sureties." Id.

23 The agreement recites that "the training is of a duration
24 of [blank] months and is liable to be extended by a further
25 duration based on the performance of the Trainee during the
26 Training Program * * *." "12 (Twelve)" is handwritten in the
27 blank. Id. The service agreement recites, inter alia, that the
28 "above mentioned training" "involves considerable expenditure" and

1 "substantially improves the Trainee's professional standing and it
2 has been imparted by the Division at considerable expenditure as an
3 investment," and that "the Division expects a commitment
4 (elaborated below) from the employee to recover its expenditure or
5 seek a penalty for non-fulfilment of the same." Id at 1-2.

6 Beri undertook "to serve the Division * * * for a period
7 of [blank] years * * * and he/she agrees not to take employment
8 with any other person, firm or company during such period." The
9 word "three" is handwritten before "years." Id. Id at page 2.

10 "By way of guarantee" of Beri's performance, the service
11 agreement required one of two alternatives: (1) giving a refundable
12 deposit of 50,000 rupees for two years, subject to forfeiture "in
13 the event of a breach of any of the terms and conditions of this
14 agreement of which the Division shall be the sole judge," and (2)
15 providing the names of "near relatives" to "stand as Surety" to be
16 liable to pay 50,000 rupees in the event of "failure/neglect to
17 fulfill any of the terms of this undertaking or of any other form
18 of breach." Id at pages 3-4. The paragraph containing the former
19 choice (the refundable deposit) is stricken out and the latter
20 contains the name, address and occupation of Virendar Beri as
21 surety.

22 The provision in the service agreement upon which
23 defendants rely most heavily in bringing the instant motion
24 provided: "[i]n the event of any dispute or disagreement over the
25 interpretation of any of the terms hereinabove contained or any
26 claim of liability of any part including the Surety/Sureties * * *
27 shall be referred to a person to be nominated by the Division whose
28 decision shall be final and binding upon the parties hereto," which

1 reference "shall be deemed a submission to arbitration." Id at 4.
2 "The venue of arbitration shall be Mumbai." Id. The same
3 paragraph also stated "[s]ubject hereto the Court in Mumbai shall
4 have exclusive jurisdiction to the exclusion of all other courts."

5 Finally, the service agreement provided that if the
6 trainee "leaves/resigns," she must pay not only liquidated damages
7 of 50,000 rupees but also "three months' calendar notice or salary
8 in lieu thereof." Id.

9 The copy of the service agreement attached to defendants'
10 moving papers bears the signatures of Beri and her father Virendar
11 Beri acting as her surety, but the signature blank for TCS is
12 empty. Id at 6.

13 On April 4, 2003, just five days short of the two-year
14 mark for Beri's three-year service agreement, Beri signed three
15 documents presented to her by TCS in preparation for her deputation
16 to the United States.

17 The first such document was a "Service Agreement Addendum"
18 (the addendum) signed by Beri and a different surety, Rashim Anand.
19 Doc #75 Ex C. The addendum recited, inter alia, that "the Employee
20 has executed a Service Agreement that, among other things, contains
21 service commitments by the Employee" and that "the Employee may
22 require [sic] to embark on an overseas deputation to the United
23 States" and that "the Employee has agreed voluntarily to accept and
24 embark upon the overseas deputation." Id at 1.

25 Paragraph one of the addendum provided that Beri "agrees
26 to return to India after completion of every overseas deputation
27 provided the deputation was in excess of 30 days and to serve TCS in
28 India for a minimum period of six months." Id. It further provided

1 that "in the event of the Employee's breach of the commitment
2 specified in paragraph 1 [to return to India], above, the matter
3 will proceed to arbitration in accordance with the provisions of the
4 Indian Arbitration and Conciliation Act of 1996" and, moreover,
5 specified two alternative arbitrators: Navroze H Seervai and Keki
6 Mehta, both of Mumbai, India. Id. A subparagraph provided that TCS
7 — but not the employee — could seek an award of damages from the
8 arbitrator if the employee should fail to complete the required term
9 of service in India. Id at 2, ¶ C. A further paragraph stated
10 TCS's sole remedy, if the employee's breach occurred during the
11 deputation, to be that specified in the deputation agreement
12 (described infra). Id at 3.

13 The addendum also contained a provision addressing the
14 circumstance present in Beri's case (but absent from Vedachalam's)
15 that the period of service required under the service agreement had
16 not yet been satisfied before the deputation began:

17 when an employee proceeds on an overseas deputation for a
18 TCS assignment at one of its client companies, then the
19 Employee's remaining obligations under the Service
20 Agreement will be as follows:

21 A. The Employee will be obligated to serve TCS for any
22 time remaining under the prescribed period of the
23 Employee's service commitment as specified in the Service
24 Agreement. Any such remaining commitment will run
25 concurrently with any additional service commitment
26 incurred by the Employee as a result of the deputation to
27 the United States and the Employee remains subject to
28 his/her Rs 50,000 obligation with respect to this
commitment. However, in the event that a breach of this
service commitment also constitutes a breach of the
Deputation Agreement that invokes the remedies and damages
specified in the Deputation Agreement if the Employee
leaves any assignment on the deputation before its
conclusion, then TCS' sole remedy will be to proceed in
accordance with the remedy specified in the Deputation
Agreement.

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1 B. The Employee will remain obligated to give three
2 months' notice of resignation, but there will be no
3 remaining obligation for the payment of salary in lieu of
4 notice in the event of the Employee's resignation. This
continuing obligation to provide three months' notice of
resignation will run concurrently with any additional
service commitments by the Employee.

5 Id at 3.

6 Beri also signed a document styled "Deputation Agreement
7 — United States." Doc #75 Ex D at 1. The deputation agreement,
8 much expanded over that signed by Vedachalam, provided that the
9 "Employee does agree and commit, to complete his/her Deputation in
10 the Country of deputation and to return to India at the conclusion
11 of the Deputation in order to impart the experience, knowledge and
12 skills acquired on the Deputation to employees of the Employer in
13 India," to serve TCS exclusively, to safeguard proprietary
14 information, to comply with United States laws and not to compete
15 with TCS while employed and for one year following termination of
16 employment. Id. An initial "general provision" provided, inter
17 alia, that

18 the Employee is an employee of the Employer pursuant
19 to a Service Agreement entered into in India upon
20 commencement of the Employee's employment. The
21 Service Agreement, and all other current agreements
between the Employee and the Employer regarding the
employment relationship in India, remain in full
force and effect.

22 Id ¶ 1.1.

23 Regarding disputes, Paragraph 8 provided that the Employer
24 could seek "from any court of competent jurisdiction * * *
25 injunctive relief, * * * an equitable accounting * * * and any
26 damages allowed by law." Paragraph 10.2(a), meanwhile, provided:

27 any claim or controversy arising out of the
28 Employee's breach as specified in paragraph 10.1
[failure by employee to complete the deputation]

1 will be submitted to litigation in courts of
2 competent jurisdiction in the State of Maryland,
3 Montgomery County * * *. THE PARTIES EXPRESSLY
4 AGREE TO SUBMIT TO PERSONAL JURISDICTION OVER
5 HIM/HER IN THE STATE OF MARYLAND ACCORDINGLY.

6 Paragraph 10.2(c) contained an acknowledgment that the parties had
7 entered into the service agreement and the addendum "which contain,
8 among other commitments, a contractual commitment by the Employee
9 (i) to serve the Employer as an Employee of the Employer in India
10 for a minimum stated term and (ii) to return to India after a
11 Deputation and continue to work for the Employer in India for a
12 period of six (6) months." This paragraph concluded with an
13 acknowledgment that the service agreement and the addendum "contain
14 a mechanism for an arbitration in India (pursuant to Indian law) in
15 the event the Employee breaches either of these commitments."
16 Paragraph 10.2(d) stated that "as specified in the Service Agreement
17 Addendum" the arbitration remedy in the service agreement and the
18 addendum would not be available to TCS for a breach of paragraph
19 10.1, for which a suit for civil damages in the state court of
20 Maryland would be the sole method of redress.

21 The Deputation Agreement bore Beri's signature, together
22 with a notarial seal, on every one of its nine pages, but, while it
23 provided blanks for a signature on behalf of TCS and for a witness
24 to that signature, both blanks were unsigned. Doc #75 Ex D, passim.

25 The third agreement dated April 4, 2003 was a "Deputation
26 Terms Agreement for a United States Deputation" containing more
27 specific terms of Beri's employment in the United States. Doc #75
28 Ex E. This, like the other documents, had a signature blank for TCS
but was not signed by TCS. It provided that the deputation term was
for twelve months and that Beri would continue to receive her salary

The deputation terms agreement also contained a number of terms relating to business and travel expenses, leave, visa and medical issues and other details associated with the deputation. Among these additional provisions was the following: "Upon your return to India, you will continue to be bound by the terms and conditions of your Service Agreement and Service Agreement Addendum executed by you. As stated in the [addendum], you agree to return to India after completion of your Deputation for an additional period of post-deputation service to TCS in India of 6 months." Id ¶ 6. This agreement did not address dispute resolution. It concluded with an affirmation that, among other things, confirmed "your agreement to the terms and conditions of your deputation agreement, service agreement, service agreement addendum and confidentiality agreement" above Beri's signature.

Beri filed her first amended complaint initiating this action on June 5, 2006. Doc #24. The amended complaint contains allegations related to both Vedachalam and Beri. Because the motions before the court pertain only to Beri's claims, the following summary discusses only these claims and not those pertaining to Vedachalam.

1 Beri alleges that TCS promised in her Deputation Terms
2 Agreement that, for her work in the United States, she would receive
3 a gross amount of \$50,000 in addition to the compensation and
4 benefits she received in India, but that defendants failed to pay
5 her the promised amounts. Doc # 24 ¶ 7, 29.

6 Beri also alleges that defendants violated various
7 California Labor Code provisions by requiring her to pay back to
8 defendants wages that she had previously earned. Id ¶ 10. For
9 example, Beri alleges that in 2004 TCS unlawfully refused to provide
10 Beri with her W-2 tax form unless she first paid TCS \$2,440 and that
11 only after Beri wrote a check to TCS in that amount did TCS provide
12 her with her W-2 forms. Id ¶ 32.

13 Beri further alleges that defendants improperly
14 misclassified her as exempt from overtime pay and that she
15 consistently worked more than eight hours per workday and forty
16 hours per workweek without receiving overtime pay. Id ¶ 11.

17 And finally, Beri alleges that "at least until July 2005,"
18 TCS maintained an unlawful "use-it-or-lose-it" vacation policy,
19 whereby employees who left TCS forfeited vacation time that
20 they earned but did not use, and that TCS violated California labor
21 law by failing to pay discharged employees all wages earned and
22 unpaid within 72 hours of termination. Id ¶ 12. Specifically, Beri
23 asserts that she never took vacation from TCS during the time that
24 she worked for the company but was never compensated for the
25 vacation days that she did not use. Id ¶ 67.

26 Beri is a plaintiff in eight of the amended complaint's
27 nine causes of action: (1) breach of contract for failing to pay
28 the salary promised in the Deputation Terms Agreement; (2) unjust

1 enrichment through retaining tax refunds; (3) violation of
2 California Labor Code § 221 (which provides that it "shall be
3 unlawful for any employer to collect or receive from an employee any
4 part of wages theretofore paid"); (4) violation of California Labor
5 Code §§ 510, 1194 by failing to pay overtime to non-exempt
6 employees; (5) violation of California Labor Code §§ 201-203 by
7 failing to pay employees their earned wages within seventy-two hours
8 of dismissal; (6) violation of California Labor Code §§ 218.5, 227.3
9 and 201-203 by failing to pay for unused vacation time accrued by
10 employees; (7) violation of California Labor Code § 226 and 1174 by
11 failing to provide accurate statements showing gross wages and
12 deductions; and (8) "false, unfair, fraudulent and deceptive
13 business practice within the meaning of [California] Business and
14 Professions Code §§ 17200." She seeks actual damages and equitable
15 relief, exemplary and punitive damages, injunctive and declaratory
16 relief, fees and costs.

17 Defendants move to compel arbitration of all of Beri's
18 claims based on the documents described in Part I A, supra. Doc #74.

19
20 II

21 To compel arbitration, defendants must identify a valid,
22 enforceable agreement to arbitrate and establish that the agreement
23 to arbitrate covers the claims asserted by Beri. Unless both
24 conditions are met, the court may not compel arbitration.

25 The United Nations Convention on the Recognition and
26 Enforcement of Foreign Arbitral Awards (the convention) requires
27 parties to the convention, of which the United States is one, to
28 recognize

1 an agreement in writing under which the parties
2 undertake to submit to arbitration all or any
3 differences which have arisen or which may arise
4 between them in respect of a defined legal
relationship, whether contractual or not,
concerning a subject matter capable of settlement
by arbitration.

5 Convention Art II, ¶ 1, 9 USC § 201. The convention defines "an
6 agreement in writing" to include "an arbitral clause in a contract
7 or an arbitration agreement, signed by the parties or contained in
8 an exchange of letters or telegrams." Id Art II ¶ 2.

9 Courts "shall," when a party to an arbitration agreement
10 meeting the above criteria seeks to enforce it, "refer the parties
11 to arbitration, unless it finds that the said agreement is null and
12 void, inoperative or incapable of being performed." Id Art III ¶ 3.

13 Under article II of the convention, "the first task of a
14 court asked to compel arbitration of a dispute is to determine
15 whether the parties agreed to arbitrate that dispute. The court is
16 to make this determination by applying the 'federal substantive law
17 of arbitrability, applicable to any arbitration agreement within the
18 coverage of the Act.'" Mitsubishi Motors Corp v Soler
19 Chrysler-Plymouth, Inc, 473 US 614, 626 (1985), quoting Moses H Cone
20 Memorial Hospital v Mercury Construction Corp, 460 US 1, 24 (1983).
21 In so doing, the court applies the federal common law of contracts.
22 "In applying federal contract law, we are guided by general
23 principles of contract law and by the Restatement." First
24 Interstate Bank of Idaho v Small Business Administration, 868 F2d
25 340, 343 (9th Cir 1989).

26 In response to defendants' motion, Beri contends that the
27 documents defendants have presented to the court do not contain a
28 valid agreement to arbitrate the disputes in her first amended

1 complaint. Her primary argument is that, as the court determined in
2 Vedachalam's case, no contract to arbitrate the claims in Beri's
3 action ever came into being. Secondly, Beri argues that any
4 agreement to arbitrate disputes would not be enforceable because it
5 is "null and void" under the convention in that it is
6 unconscionable. As the court observed in its order of March 13,
7 2007 (Doc # 55 at 12), Vedachalam did not argue unconscionability
8 and the court did not consider such concepts in adjudicating the
9 motion to compel arbitration of his claims. As a separate argument,
10 Beri contends that the agreement could not form the basis for
11 arbitration of her claims for injunctive relief under California's
12 Unfair Competition Law. As noted previously, because the court has
13 determined that Beri's primary argument suffices to defeat the
14 motion to compel arbitration, this order does not reach the
15 remaining arguments.

16
17 III

18 Defendants move to compel arbitration based primarily on
19 the service agreement, which they contend was extended and
20 incorporated by reference into all the subsequent agreements.
21 Specifically, they focus on the clause referring to claims of
22 liability in this provision, contending that these words require
23 arbitration of any and all claims ever arising in the course of
24 Beri's employment with TCS: "[i]n the event of any dispute or
25 disagreement over the interpretation of any of the terms hereinabove
26 contained or any claim of liability of any part including the
27 Surety/Sureties * * * shall be referred to a person to be nominated
28 by the Division." (Emphasis added.) Doc # 75 Ex B at 4.

1 They argue that the court should not determine the service
2 agreement, as it did Vedachalam's initial agreement, to be primarily
3 one defining a relationship between "trainer and trainee." Doc # 55
4 at 13. They assert that "every reference to the [service agreement]
5 makes clear that the agreement which contains the arbitration clause
6 at issue is applicable to Beri's entire employment relationship with
7 TCS, not just her training." Id at 4.

8 Understanding that they must distinguish Vedachalam's
9 facts from Beri's in order to prevail on their motion, defendants
10 point out one difference: in contrast to Vedachalam's situation, in
11 which the initial agreement had expired before his deputation began,
12 Beri's deputation occurred during the three-year term of her initial
13 agreement; Beri therefore signed deputation-related agreements while
14 the service agreement was still in effect. Id at 3. The service
15 agreement was dated March 2, 2001 and the deputation-related
16 agreements were dated April 4, 2003. The court agrees that this
17 distinguishes Beri's case from Vedachalam's. The distinction,
18 however, is not material to the outcome of defendants' motion.

19 Defendants also argue that Beri's service agreement should
20 not be regarded as primarily a training agreement because Beri's
21 stated training period was one year, but her obligation to work for
22 TCS continued for two additional years. Doc # 85 at 2-4. "If the
23 [service agreement] were only a document governing training, it
24 would make no sense for it to continue beyond the twelve month
25 training period." Id at 3. They also consider it significant that
26 Beri's service agreement contains the word "minimum" in connection
27 with her three-year obligation. Id. Neither of these points,
28 however, distinguishes Beri's facts from Vedachalam's. Nor,

1 standing alone, would these points warrant a finding of
2 arbitrability.

3 Vedachalam's initial agreement entitled him to one month
4 of training in exchange for "a minimum period of" two years' service
5 — a 1:12 ratio of training to service in contrast to Beri's 1:3.
6 The fact that the service obligation extends well beyond the
7 expiration of the training period does not change the fact that the
8 stated purpose of the agreement was for Beri to obtain training, the
9 quid pro quo for which was Beri's agreement to terms of service that
10 greatly restricted her freedom in the employment context for "a
11 minimum period of" three years. Specifically, Beri's obligation to
12 work for TCS for three years would never have existed had she not
13 received the benefit of TCS's training under the service agreement;
14 absent this obligation, Beri would presumably have been free to
15 switch employers (something she was explicitly barred from doing
16 under paragraph 1 of the service agreement) and her sureties'
17 capital would not have been at risk of forfeiture for the three-year
18 period during which Beri was obligated to serve TCS exclusively.
19 The presence of the term "minimum" in the service agreement is, by
20 the same token, not helpful to defendants' position.

21 Article II, section one of the convention requires the
22 court to recognize an agreement "under which the parties undertake
23 to submit to arbitration all or any differences * * * in respect of
24 a defined legal relationship." Accordingly, the court must
25 determine whether the claims stated in the complaint are within the
26 scope of the legal relationship defined in the service agreement.

27 Like Vedachalam's claims, Beri's claims in her suit are
28 not "in respect of" the training relationship as required by the

1 convention. Beri's claims arise from issues pertaining to her
2 employment following her deputation to the United States, not the
3 training period or the training program. Only the service agreement
4 contains an arbitration clause that could be construed to require
5 Beri to arbitrate disputes with TCS, but the service agreement is
6 concerned with the training relationship. The terms and conditions
7 governing Beri's deputation to the United States, which was a
8 significant new and essentially separate development in Beri's
9 relationship with TCS, are specified in other documents — the
10 addendum, the deputation agreement and the deputation terms
11 agreement. Although the latter documents contain verbiage such as
12 "by signing below you * * * confirm your agreement to the terms and
13 conditions of your deputation agreement, service agreement,
14 [addendum], and confidentiality agreement," see, e g, Doc # 75 Ex E
15 at 4, such boilerplate clauses do not suffice to extend the reach of
16 the service agreement's arbitration clause to other agreements that
17 contain different, superseding or no provisions for dispute
18 resolution because they do not clearly evidence the required intent
19 to submit to arbitration disputes arising from the deputation.

20 Defendants cite Chloe Z Fishing Co v Odyssey Re (London)
21 Limited, 109 F Supp 2d 1236, 1254-55 (S D Cal 2000) (Gonzales, J),
22 which held that arbitration clauses in two sets of insurance
23 policies could be read broadly enough to encompass collateral
24 disputes "'arising out of' or 'in connection with' the parties'
25 business relationship created by" the insurance policies at issue in
26 that case. Defendants argue that the arbitration clause in Beri's
27 service agreement should be read to apply to all other agreements
28 and, indeed, all events and issues pertaining to her employment.

1 But Chloe Z is distinguishable in important respects from the
2 present case.

3 At issue in Chloe Z was a dispute over insurance coverage
4 in which, as is typical in such cases, the outcome of the dispute
5 hinged on interpreting the language of the policies. The two
6 policies contained slightly different arbitration clauses, one
7 providing that "any difference or dispute between the Company and
8 the Assured concerning any claim under the Policy of Insurance
9 [would be] referred to arbitration in London," the other providing
10 that "any difference between the Company and the Assured arising out
11 of or in connection with the Policy of Insurance [would be] referred
12 to arbitration in London * * *." Id at 1254-55. The court noted
13 that each of the plaintiffs' five causes of action — breaches of
14 the covenant of good faith and fair dealing, unfair business
15 practices in connection with the handling of the plaintiffs' claims,
16 intentional interference with contractual relations with third-party
17 lenders and the United States government and declaratory relief
18 regarding informing plaintiffs of the coverage provided by the
19 policies — "either specifically references the interpretation of
20 the P & I policies * * * or implicitly charges that defendants have
21 not performed their obligations in light of the coverage provided to
22 plaintiffs in the P & I policies." Id at 1256. Finding that all
23 the claims rested on interpretation of the policies, the court
24 compelled arbitration of all claims in the suit.

25 The clutch of documents before the court on the instant
26 motion, however, bears little resemblance to the pair of insurance
27 forms under review in Chloe Z. Like the contracts under review in
28 Chloe Z, the documents were forms drafted by the party seeking to

1 compel arbitration. But the instant motion presents several
2 complexities not present in Chloe Z. First, in Chloe Z only one
3 single insurance policy was in effect at any given time, whereas in
4 the instant matter four documents contained terms purporting to
5 govern the employment relationship between Beri and TCS at the time
6 of the events at issue in the amended complaint. Second, and more
7 importantly, whereas in Chloe Z the policies provided that all
8 "differences" would be referred to arbitration in London, the
9 documents at issue here provide for different legal remedies and
10 forums for different types of breaches of the agreements by Beri —
11 liquidated damages, actual and consequential damages, arbitration,
12 litigation in Indian courts and Maryland state courts and so on.
13 Third, moreover, these provisions are not mutual; whereas there are
14 numerous provisions contemplating different types of breaches by
15 Beri, only one provision is arguably applicable to TCS: the broad
16 clause in paragraph 4 of the service agreement (Doc # 75, Ex B)
17 referring to "any claim of liability of any part including the
18 Sureties." These distinctions are critical; Chloe Z provides little
19 guidance here.

20 TCS's intent in drafting the various provisions is not
21 expressly stated and is not obvious. The court's careful review of
22 the documents presented in support of the motion leads it to several
23 conclusions about TCS's intent: (1) because none of the documents
24 acknowledges the possibility that the employer might breach any
25 agreement, violate any law or otherwise commit any act that might
26 give the employee reason to seek redress, such scenarios were not
27 within TCS's contemplation at the time it drafted the various
28 provisions pertaining to dispute resolution; (2) TCS's primary

1 objectives as expressed in the documents Beri signed were to ensure
2 that Beri would (i) work for TCS for at least three years from her
3 start date and for six months after returning to India from her
4 deputation (periods which could in theory run concurrently) and (ii)
5 complete — and not leave or abandon — assignments during her
6 deputation to the United States; and (3) in the event of the latter
7 type of breach, TCS planned to seek a judicial remedy in the
8 Maryland, whereas TCS planned to arbitrate breaches of the former
9 type (which presumably would occur in India) before its arbitrator
10 in India.

11 As for the “any claim of liability of any part” clause,
12 this provision is so broad and vague that it is unpersuasive as
13 evidence that TCS intended to arbitrate disputes not directly
14 related to the service agreement. While defendants urge that the
15 breadth of this clause makes it so elastic that it can be stretched
16 to encompass the entire universe of potential disputes between Beri
17 and defendants, its very breadth more reasonably suggests that it
18 was intended to apply to “any claim of liability” by any party to
19 the service agreement arising from or pertaining to that agreement,
20 as if a clause such as “in connection with this agreement” had
21 simply been omitted for the sake of brevity or because it seemed
22 unnecessary.

23 The contractual arrangement at issue simply does not
24 manifest the mutual assent to arbitrate the instant disputes that
25 the convention requires. Indeed, while it is nearly certain that
26 Beri did not intend, in signing the various documents, that claims
27 such as those set forth in the amended complaint would be subject to
28 arbitration in India, it is not even apparent that TCS had such

1 intent. The service agreement does not provide a basis for
2 compelling arbitration of the claims in Beri's amended complaint.

3
4 VI

5 For the reasons stated herein, defendants' motion to
6 compel arbitration of Beri's claims is DENIED. Pursuant to the
7 stipulation and order dated May 1, 2007 (Doc #83), the parties are
8 directed to contact the deputy clerk to arrange a hearing date for
9 defendants' motion to stay proceedings (Doc #60) and defendants'
10 motion to dismiss the amended complaint (Doc #71) to be held within
11 ninety (90) days. For administrative purposes, the clerk is
12 directed to terminate these two motions (Doc ## 60, 71) and to re-
13 open them when a hearing date is noticed.

14 The administrative motion at Doc # 63 is DENIED as moot.

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16 IT IS SO ORDERED.

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19 VAUGHN R WALKER
20 United States District Chief Judge
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